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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Karl-Friedrich Laible

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

TRAN, HANH VAN

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/791,550	Applicant(s) LAIBLE ET AL.	
	Examiner HANH V. TRAN	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 3/24/2008.

Claim Objections

2. Claims 24 and 26 are objected to because of the following informalities: (1) claim 24, a period should be provided at the end of the claim, (2) claim 26, line 3, "through element" should be "attachment element". Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each independent claim, applicant's attempt to claim the destructible layer extending relative to the opening alignment axis by reciting how it extends radially relative to various elements is so confused, so as one can clearly follow the claimed language to clearly define the metes and bounds of the claimed invention. It is not clear what the metes and bounds of the claimed limitations of the destructible layer extending "in at least one radial direction to and radially beyond an anchor location radially spaced from the opening alignment axis"; the destructible layer having "at the anchor location, a border portion extending in a radial plane relative to an anchor axis completely around the anchor axis"; "the border portion

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of the destructible layer being at a radial spacing from the anchor axis”; “the destructible layer having “an anchor portion extending radially through the anchor axis and axially offset from the border portion of the destructible layer in an axial offset direction” (what is an axial offset direction?) If the destructible layer is at a “radial spacing” (which is at a distance from the anchor axis), how it is possible for the destructible layer to extend “radially through the anchor axis”? What is an “axially offset direction”? Since the claims fail to clearly define the metes and bounds of the claimed invention, and in order to advance the prosecution of the application, all claims will be examined as best understood.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 18-23, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,471,313 to Ueda et al.

Ueda et al discloses foam-filled hollow body comprising all the elements recited in the above listed claims including, such as shown in Figs 19-24, a first overlay structure (11/12) having an opening location (56); a second overlay structure (14) having an opening location (55), the second overlay structure and

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the first overlay structure being disposed relative to one another with their opening locations (56 & 55) aligned such that an opening formed at the opening location of the second overlay structure would be aligned with an opening formed at the opening location of the first overlay structure along an opening alignment axis and the second overlay structure and the first overlay structure forming an assembly in which a foam-filled volume can be retained; and a destructible layer (51) disposed between the first overlay structure and the second overlay structure, the destructible layer extending, relative to the opening alignment axis, radially between the pair of respective opening locations (56 & 55) of the second overlay structure (11/12) and the first overlay structure (14) and extending further in at least one radial direction to and radially beyond an anchor location radially spaced from the opening alignment axis, the destructible layer having, at the anchor location, a border portion extending in a radial plane relative to an anchor axis completely around the anchor axis and the border portion of the destructible layer being at a radial spacing from the anchor axis and the destructible layer having an anchor portion extending radially through the anchor axis and axially offset from the border portion of the destructible layer in an axial offset direction, the border portion of the destructible layer being located radially intermediate a border portion of the first overlay structure and a border portion of the second overlay structure, the first overlay structure having an anchor portion that is connected to, and axially offset in the axial offset direction from, the border portion of the first overlay structure, the anchor portion of the destructible layer being located axially intermediate the anchor portion of the first overlay structure

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and the second overlay structure, and the disposition of the destructible layer with the anchor portions and the border portions of the first overlay-structure and the second overlay structure is made without substantial heating of at least one of the first overlay structure and the second overlay structure, whereby the destructible layer is secured against any substantial offsetting that would act to uncover the destructible layer from its disposition between the pair of respective opening locations of the second overlay structure and the first overlay structure(see also col. 8, lines 35-51).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 25-28, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 2,845,320 to Saunders et al in view of USP 6,471,313 to Ueda et al.

Saunders discloses a refrigerating appliance comprising all the elements recited in the above listed claims including: a housing having a first overlay

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structure (21) and a second overlay structure (14), the first overlay structure (21) having an opening (to receive rivets 37, such as shown in Figs 2 & 4) and the second overlay structure (14) having an opening, the second overlay structure and the first overlay structure being disposed relative to one another with their openings are aligned along an opening alignment axis and the second overlay structure and the first overlay structure forming an assembly in which a foam-filled volume can be retained, a foam-filled volume, and an attachment element 37 extending through the opening of the first overlay structure, and the opening of the second overlay structure. The differences being that Saunders et al fails to disclose a destructible layer disposed between the first overlay structure and the second overlay structure, the destructible layer extending, relative to the opening alignment axis, radially between the pair of respective opening locations of the second overlay structure and the first overlay structure and extending further in at least one radial direction to and radially beyond an anchor location radially spaced from the opening alignment axis, the destructible layer having, at the anchor location, a border portion extending in a radial plane relative to an anchor axis completely around the anchor axis and the border portion of the destructible layer being at a radial spacing from the anchor axis and the destructible layer having an anchor portion extending radially through the anchor axis and axially offset from the border portion of the destructible layer in an axial offset direction, the border portion of the destructible layer being located radially intermediate a border portion of the first overlay structure and a border portion of the second overlay structure, the first overlay structure having an anchor portion that is

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connected to, and axially offset in the axial offset direction from, the border portion of the first overlay structure, the anchor portion of the destructible layer, being located axially intermediate the anchor portion of the first overlay structure and the second overlay structure, and the disposition of the destructible layer with the anchor and border portions of the first overlay structure and the second overlay structure is made without substantial heating of at least one of the first overlay structure and the second overlay structure, whereby the destructible layer is secured against any substantial offsetting that would act to uncover the destructible layer from its disposition between the pair of respective opening locations of the second overlay structure and the first overlay structure.

Ueda et al teaches the idea of providing a refrigerator housing wall with a destructible layer disposed between and directly in contact with a wall and a reinforcing part of a refrigerator housing, wherein the destructible layer covers openings in the refrigerator housing wall in order to prevent foam heat-insulating material from escaping through said openings during filling of the foam heat-insulating material into said housing wall. Therefore, it would have been obvious to modify the structure of Saunders et al by providing a destructible layer disposed between the first overlay structure and the second overlay structure, the destructible layer extending, relative to the opening alignment axis, radially between the pair of respective opening locations of the second overlay structure and the first overlay structure and extending further in at least one radial direction to and radially beyond an anchor location radially spaced from the opening alignment axis, the destructible layer having, at the anchor location, a border

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portion extending in a radial plane relative to an anchor axis completely around the anchor axis and the border portion of the destructible layer being at a radial spacing from the anchor axis and the destructible layer having an anchor portion extending radially through the anchor axis and axially offset from the border portion of the destructible layer in an axial offset direction, the border portion of the destructible layer being located radially intermediate a border portion of the first overlay structure and a border portion of the second overlay structure, the first overlay structure having an anchor portion that is connected to, and axially offset in the axial offset direction from, the border portion of the first overlay structure, the anchor portion of the destructible layer, being located axially intermediate the anchor portion of the first overlay structure and the second overlay structure, and the disposition of the destructible layer with the anchor and border portions of the first overlay structure and the second overlay structure is made without substantial heating of at least one of the first overlay structure and the second overlay structure, whereby the destructible layer is secured against any substantial offsetting that would act to uncover the destructible layer from its disposition between the pair of respective opening locations of the second overlay structure and the first overlay structure in order to prevent foam heat-insulating material from escaping through said openings during filling of the foam heat-insulating material into said housing wall, as taught by Ueda et al, since both teach alternate conventional refrigerator housing structure, used for the same intended purpose, thereby providing structure as claimed. In regard to claim 26, a hinge attached to the second overlay structure (14) and a door (12)

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attached to the hinge and the through attachment element 37 extends through the hinge

Response to Arguments

10. Applicant's arguments filed 3/24/2008 have been fully considered but they are not persuasive. In response to applicant's arguments on page 8-9 that Ueda fails to disclose the claimed limitation of the destructible layer having "an anchor portion extending radially through anchor axis and axially offset from a border portion of the destructible payer in an axial offset direction", the examiner respectfully takes the position that the claimed language fails to clearly define the metes and bounds of the claimed invention in order to distinguish from the prior art of record. The claimed limitations are extremely vague, and the limitations are not clearly defined. The claimed language fails to provide adequate structural limitations in order to distinguish applicant's invention from the prior art of record, and that Ueda appears to disclose all the limitations recited in the claims, as best understood.

11. Applicant's arguments regarding the combination of Saunders in view of Anell and Ueda have been considered but are moot in view of the new ground of rejection.

12. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed

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invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

13. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine Saunders in view of Ueda stems from the fact that it is well known in the art to provide such destructible layer in order to prevent foam heat-insulating material from escaping through said openings during filling of the foam heat-insulating material into said housing wall.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory

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action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HANH V. TRAN whose telephone number is (571)272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT
July 21, 2008

/Hanh V. Tran/
Patent Examiner, Art Unit 3637